IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.3408 of 2006
Date of Decision:- 12.12.2006

Karan Singh & anr. ....Appellant(s)

through
Mr.Akshay Bhan, Advocate

vs.

Smt.Gindori & ors. ....Respondent(s)

through
None.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

This regular second appeal is at the instance of the defendants and is directed against the judgment and decree dated 15.2.2002 passed by the learned Additional Civil Judge (Sr.Div.), Rewari which has been further upheld by the learned Additional District Judge, Rewari vide his judgment and decree dated 21.4.2006. Vide the aforementioned judgments, the suit for declaration filed by the plaintiff-respondents to the effect that they are owners in possession of the agricultural land, fully described in the headnote of the plaint, has been decreed.

The facts may be briefly noticed. The respondent-plaintiffs are widow and daughter of Jeeva Ram. The appellants are sons of brother of Jeeva Ram. Admittedly, Jeeva Ram was owner in possession of the subject property. According to the respondent-plaintiffs, Jeeva Ram died on 8.10.1993 and he had been suffering from typhoid for a period of more than one month before his death. Alleging that no Will was ever executed by deceased Jeeva Ram during his life time and he died intestate and, thus,

they have inherited the subject property being the only legal heirs of deceased Jeeva Ram, the respondent-plaintiffs filed the present suit.

The appellants contested the respondent's claim primarily on the ground that deceased Jeeva Ram had executed a Will dated 18.10.1993 (Exh.DW1/A) in their favour in respect of the subject property. According to the appellants, they looked after and served the deceased during his life time when he was suffering from multiple ailments and on account of the love and affection which the deceased had had for them, he executed the Will in their favour. The appellants while leading their evidence also alleged that the deceased had expired on 11.1.1994 and not on 8.10.1993 as averred by the respondent-plaintiffs.

The only question, thus, to be determined by the Courts below was as to whether or not the Will dated 8.10.1993 (Exh.DW1/A) was genuinely executed or it was shrouded with suspicious circumstances?

Both the Courts below have concurrently held that deceased Jeeva Ram in fact died on 8.10.1993. They have also held that the deceased was suffering from several ailments at the time of his death. It has also been held that the Will does not satisfy the ingredients of Section 68 of the Indian Evidence Act and, thus, its valid execution is not proved. The Courts below have also doubted the genuineness of the Will on the ground that it was purported to have been executed by the deceased on the day when he expired and also when he was admittedly ill-disposed.

I have heard learned counsel for the appellants at length and perused the record which was got summoned vide order dated 7.9.2006.

Shri Akshay Bhan, learned counsel for the appellants has vehemently contended that the Will dated 8.10.1993 (Exh.DW1/A) is

validly executed and it being the last wish of the testator, the Courts below ought not to have misdirected themselves in discarding the same. He argues that the Will is a registered document and is presumed to be genuine. He has also referred to the death certificate of the deceased Exh.DW10/A and the Form Exh.DW11/A on the basis of which the entry in the records of the Health Department was made. Relying upon the same, it is contended that the deceased in fact died on 11.1.1994 and not on 8.10.1993.

Having heard learned counsel for the appellants, I do not find any merit in this appeal. Firstly, it needs to be considered as to when exactly did the deceased die on 8.10.1993 or 11.1.1994? The respondent-plaintiffs have specifically averred in their plaint that the deceased died on 8.10.1993. This averment though was denied by the appellants in their written statement, however, they never disclosed as to on which date the deceased had expired. In support of their plea that the deceased actually died on 8.10.1993, the respondent-plaintiffs have produced oral as well as documentary evidence. The Patwari Halqa, namely, Bir Singh (PW-5) has categorically deposed that at the relevant time he was having additional charge of Village Balawas Jamalpur and he had entered the Mutation No.423 dated 18.12.1993 regarding the succession of Jeeva Ram in favour of the respondent-plaintiffs. In the said mutation, Jeeva Ram is mentioned to have died on 8.10.1993. He has further deposed that on 30.12.1993 in the Jalsa-aam held in the presence of Assistant Collector, Ist Grade, mutation Exh. PW5/1 was sanctioned in favour of the respondent-plaintiffs. The original record reveals that at Sr.No.423, the aforesaid mutation has been entered into and in column No.13 thereof, Jeeva Ram has been mentioned to have died on 8.10.1993. How could the mutation be

sanctioned before 11.1.1994 had Jeeva Ram died on that day only ?

As far as the death certificate Exh.DW10/A is concerned, both the Courts below, on perusal of the original Register produced by Parma Nand (D.W.10) Statistical Assistant in the office of Chief Medical Officer, Rewari, have observed that in the original Register there is an over-writing on page No.57 at Sr.No.1 dated 23.1.1994. Initially the said entry as regarding the death of one Hari Om son of Sh. Satbir Singh, resident of village Balawas Jamalpur but after cutting his name, the name of Jeeva Ram son of Jee Sukh has been written. This fact is duly remarked on the death certificate Exh.DW10/A by way of a "note". The Courts below have, thus, rightly not placed any reliance upon such kind of evidence.

As regard to the genuineness of the Will in dispute, it may be mentioned here that it was allegedly executed on the day when deceased Jeeva Ram expired i.e. on 8.10.1993. The evidence adduced by the respondents especially the statements of Dr.Arjun Singh and Dr.Harish Yadav (PW-1 and PW-2), along with the medical record, shows that the deceased was suffering from more than one ailment prior to his death. It is difficult to believe that the deceased was in such a state of mind that he could actually take a firm decision to completely deprive his natural legal heirs and give the entire estate to the sons of his brother, more so when no arrangement even for the bare maintenance of respondent No.1, namely, the wife of the deceased, was made. There are some other minor discrepancies also which too have been noticed by the Courts below to cast further doubts on the genuineness of the Will in question.

In the light of the above discussion and having regard to the fact that the questions raised in this appeal are pure and simple questions of

fact which do not give rise to any substantial question of law, I do not find any merit in this appeal.

Dismissed.

December 12, 2006 **(SURYA KANT)**
poonam **JUDGE**